

APPENDICES

APPENDIX "A"

OPINION OF THE COURT OF CLAIMS

IN THE UNITED STATES COURT OF CLAIMS

Appeal No. 8—65

Ind. Cl. Comm. Docket No. 65

11 Ind. Cl. Comm. 171

15 Ind. Cl. Comm. 123, 488

(Decided December 16, 1966)

**THE PEORIA TRIBE OF INDIANS OF OKLAHOMA,
ET AL. v THE UNITED STATES**

Jack Joseph, attorney of record, for appellants. *Louis L. Rochmes*, of counsel.

Craig A. Decker, with whom was *Assistant Attorney General Edwin L. Weisl, Jr.*, for appellee. *Ralph A. Barney*, of counsel.

Before *COWEN, Chief Judge*, *LARAMORE, DURFEE, DAVIS*
and *COLLINS, Judges*.

OPINION

COWEN, Chief Judge, delivered the opinion of the court:

The Peoria Tribe seeks review of two adverse portions of a decision of the Indian Claims Commission which was generally favorable to the tribe. Two separate issues are involved on the appeal. The first concerns the payment given the Indians in place of certain annuities

which they relinquished in 1854. Before that year, the Weas and the Piankeshaws were the beneficiaries of permanent annuities coming to \$3,800 per year. By the Treaty of May 30, 1854, 10 Stat. 1082, these groups joined with others to form the single Peoria Tribe (see *Peoria Tribe of Indians of Oklahoma v. United States*, 169 Ct. Cl. 1009 (1965)), and all agreed to give up those annuities (Art. 6). "[I]n consideration of the relinquishments and releases aforesaid", the United States agreed to pay the united tribe a total of \$66,000 in six installments from 1854 to 1859, "and also to furnish said tribe with an interpreter and a blacksmith for five years, and supply the smith shop with iron, steel, and tools, for a like period." The Indian Claims Commission found that the United States actually paid a total of \$70,820 in discharge of these obligations, and appellants do not

¹ Article 6 provided: "The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquished and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations, or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States; and in consideration of the relinquishments and releases aforesaid, the United States agree to pay to said united tribe, under the direction of the President, the sum of sixty-six thousand dollars, in six annual instalments, as follows: In the month of October, in each of the years one thousand eight hundred and fifty-four, one thousand eight hundred and fifty-five, and one thousand eight hundred and fifty-six, the sum of thirteen thousand dollars, and in the same month in each of the years one thousand eight hundred and fifty-seven, one thousand eight hundred and fifty-eight, and one thousand eight hundred and fifty-nine, nine thousand dollars, and also to furnish said tribe with an interpreter and a blacksmith for five years, and supply the smith shop with iron, steel, and tools, for a like period."

now contest that figure. The Commission then found that the commuted value, as of 1854, of the released annuities (computed at a 5 percent interest rate) would be \$76,000. Appellants also agree with this conclusion. But the Commission refused to award the tribe the difference between \$76,000 and \$70,820 (i.e., \$5,180), ruling that the consideration paid was not unconscionable even though it fell short by \$5,180 of the true value of the released annuities. Appellant urge that this was error, and that they are entitled to a judgment for the \$5,180.

We agree with the Commission that in the circumstances the payment of \$70,820 for annuities worth \$76,000 did not represent an unconscionable consideration, or indicate something less than fair and honorable dealings. The amount ultimately paid was 93 percent of the full value. This is a small discrepancy, both in percent and in absolute figures. Moreover, as the Commission pointed out, the consideration, according to the treaty, was to be \$66,000 in cash plus the supplying of certain goods and services for 5 years; "it may well have been that the United States anticipated that the materials and services would amount to \$10,000.00 thereby requiring the total of \$76,000.00 to satisfy the obligations under Article 6." 11 Ind. Cl. Comm. 171, 178 (1962). At the time of the signing of the treaty this would have been a reasonable forecast, and it is proper to assess the worth of the consideration at that date rather than upon the basis of what may actually have occurred during the ensuing 5-year period from 1854 to 1859.

The Miami Tribe of Oklahoma v. United States, 150 Ct. Cl. 725, 140-42, 281 F. 2d 202, 211-12 (1960), cert. denied, 366 U.S. 924 (1961), does not require reversal of the Commission's determination. The court held that the consideration for a commuted annuity must be adequate, but in that instance the United States paid only 78 percent of the value and the difference in monetary terms was the large sum of \$118,136.50; in addition, Miami Tribe did not have the factor of promised supplies and services which could reasonably be valued, prospectively, as making up the difference.

Nez Perce Tribe of Indians v. United States, 176 Ct. Cl. — (July 1966), is distinguishable on comparable grounds. The court's opinion points out the significantly different elements supporting that claim; a minimum discrepancy of 33⅓ percent depriving the claimant of at least \$566,045.77, with a consequent probable loss of interest of \$200,000, thus raising the minimum discrepancy to about 50 percent—a large figure. The court carefully declared that it was not departing from the rule that, before a price disparity can be labeled unconscionable, it must be "very gross". In the present case we cannot call the small disparity "gross", let alone "very gross".

The second claim involves another provision of the 1854 treaty. Under Article 4, 10 Stat. 1083, the Federal Government agreed to sell some land owned by the Indians in Kansas at public auction, and "to pay to the said Indians, as hereinafter provided, all the moneys arising from the sales of said lands after deducting therefrom the actual cost of surveying, managing, and selling the same". The Commission held that the United States breached these obligations by allowing white "settlers" to buy the lands at an appraised price, rather than selling the property in a freely competitive market at higher levels. The difference between the appraised values and the fair market value was found to be \$172,726.04, and recovery was ordered in that amount.² Neither side questions this figure. The appellants urge, however, that the Commission erred in refusing to grant interest on this award from 1857 to the date of payment.

Appellants concede that the Government, absent its consent, has always been immune from an obligation to pay interest. "The right to claim and recover interest from the United States is purely a matter of grace * * *"
Richmond, F. & P. R.R. Co. v. United States, 95 Ct. Cl.

² The Commission found the fair market value of the land to have been \$2.50 per acre in June-July 1857 (the time of sale). Since 207,758.85 acres were involved, the tribe should have received \$519,397.13. The sum it actually received was \$346,671.09. The difference is \$172,726.04.

244, 259 (1942). The recovery of interest must be expressly provided for in a statute, treaty, or contract. Moreover, the consent necessary to waive governmental immunity from interest "must be affirmative, clear-cut, and unambiguous". *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 590 (1947). As the Supreme Court stated in *United States v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 659 (1947):

[T]here can be no consent by implication or by use of ambiguous language. Nor can an intent on the part of the framers of a statute or contract to permit the recovery of interest suffice where the intent is not translated into affirmative statutory or contractual terms. The consent necessary to waive the traditional immunity must be express, and it must be strictly construed.

See also *United States v. Alcea Band of Tillamooks*, 341 U.S. 48 (1951); *Cherokee Nation v. United States*, 270 U.S. 476 (1926).³

There is no contention that there was a constitutional taking of appellants' land. However, more than 100 years after the treaty was entered into and on the basis of a statute enacted many years later, the Indian Claims Commission determined that appellants are entitled to \$172,726.04, an additional sum that would have been paid for the Indian lands if the Government had not

³ For an example of how strictly such a waiver of immunity has been construed, see *Anglin & Stevenson v. United States*, 160 F. 2d 670 (10th Cir. 1947), *cert. denied*, 331 U.S. 834, (1947), in which Rule 25 of the Circuit Court, in conformity with the related statute and having the force of law, provided that when a lower court judgment is affirmed "interest thereon shall be calculated and levied from the date of the judgment . . ." *Id.* at 672. The court held that this allowance of interest did not apply to a judgment against the United States, since Congress had not expressly consented to the payment of interest by the United States. Cf. *Nez Perce Tribe of Indians v. United States*, *supra*, slip op. pp. 12-13.

breached its agreement to sell the lands at public auction. As a result of these events, appellants maintain that if the additional proceeds now determined to be due had been realized when the lands were sold, the language of the 1854 treaty would have required the United States to pay interest on the \$172,726.04 and, therefore, that they are now entitled to such interest. The claim is based solely on that portion of Article 7 of the 1854 treaty which reads:

And as the amount of the annual receipts from the sales of their lands, cannot now be ascertained, it is agreed that the President *may*, from time to time, and upon consultation with said Indians, determine how much of the net proceeds of said sales shall be paid them, and how much shall be invested in safe and profitable stocks, the interest to be annually paid to them, or expended for their benefit and improvement. [Emphasis added.]

Whether we consider the foregoing language of the treaty separately and apart from the remainder of that document or whether we construe it in connection with other articles of the treaty, we arrive inescapably at the same conclusion: Article 7 of the treaty conferred discretion upon the President to invest the proceeds or not, as he saw fit. There is neither agreement nor consent by the United States to pay interest upon the proceeds.

The word "may" in Article 7 denotes that the signatories to the treaty vested in the President the discretion to pursue alternative courses of action. He could pay the proceeds directly to the Indians; he could *invest* them in "safe and profitable stocks"; or he could do both. There is no mandate that the President act in a single specified manner, and nowhere in the entire treaty may there be found an explicit promise by the Government to pay interest.*

* Such a promise cannot, of course, be implied. *United States v. N.Y. Rayon Importing Co.*, *supra*.

When we turn to other provisions of the same treaty, it is apparent that the framers of the treaty knew how to impose a duty or to express a promise, and for such purposes they used clear and explicit language such as "shall"⁵ and "agree"⁶. The framers also know how to confer discretion; and when particular powers or actions called for discretion, the treaty spoke in terms of "may".⁷ Thus the parties to the treaty knew how to express an "affirmative, clear-cut" obligation. *United States v. Thayer-West Point Hotel Co.*, *supra*. They did not do so in Article 7 concerning disposition of the proceeds.⁸

In pressing their claim for interest, appellants rely mainly upon the decision of the Supreme Court in *United States v. Blackfeather*, 155 U.S. 180 (1894). However, an examination of that decision demonstrates quite clearly that the treaty there considered contained a direct and unequivocal promise by the United States to pay five per cent per annum on the proceeds of the sale of Indian lands. In the seventh article of the treaty before the Supreme Court in that case, it was agreed that the proceeds of the sale of Indian lands, after certain deductions had been made, "shall constitute a fund for the future necessities of said tribe, parties to this compact, *on which the United States agree to pay to the chiefs, for the use and general benefit of their people, annually, five per centum on the amount of said balance, as an*

⁵ See, e.g., Articles 3, 4, and 5.

⁶ See Article 6.

⁷ See, e.g., Articles 3, 4, 9, and 11.

⁸ Therefore, we do not consider appellants' argument that Congress in the years immediately preceding the signing of the treaty construed a *promise* to invest in safe and profitable stocks as equivalent to a promise by the United States to pay interest on the sum to be "invested". Our concern here is solely with what the United States obligated itself to do; and as shown above, the United States did not even obligate itself to invest the proceeds. To invest or not was discretionary; hence, even if we were to find the claimed equivalency, we could find no *promise* to pay interest.

annuity". [Emphasis supplied.] 155 U.S. at 188. Although the promise of the United States to pay five percent annually on the fund was denominated in the treaty as an annuity, the Supreme Court held that the unqualified promise of the United States to pay an annuity of five percent was substantially the same as an agreement to pay interest in the same amount. That decision cannot be made to fit the case at bar, because in the treaty involved here there was no equivalent affirmative obligation to pay the Indians interest or to make any other type of payment on the proceeds of the sale of their lands, no matter how such payment may be denominated.

Mille Lac Band of Chippewas v. United States, 47 Ct. Cl. 415 (1912), *rev'd*, 229 U.S. 498 (1913), which is also relied upon by appellants, is equally inapplicable, because that case arose under the Act of January 14, 1889, 25 Stat. 642, which expressly provided for the payment of interest at the rate of five percent per annum on sums received from the sale of the Indian lands. 47 Ct. Cl. at 462.

In summary, the 1854 treaty clearly specified that the disposition of the proceeds of the land sales was left to the discretion of the President. Therefore, it would be judicial treaty-writing for us to read into that agreement an express promise by the Government to pay interest.⁹

⁹ Admittedly no interest is allowable for the breach of an obligation to pay over money to the Indians. *Confederated Salish and Kootenai Tribes v. United States*, 175 Ct. Cl. — (May 1966), *cert. denied*, 385 U.S. 921 and *Ramsey v. United States*, 121 Ct. Cl. 426, 431-32, 101 F. Supp. 353 (1951), *cert. denied*, 343 U.S. 977 (1952). Any argument that the President was implicitly precluded from paying over more than was necessary to maintain the reasonable wants of the Indians is without merit. If such a limitation had been desired, it would have been expressly so provided in the treaty. *Cf.* Treaty with the Delawares, May 6, 1854, Art. 7, 10 Stat. 1048, 1050.

For the reasons stated above, we hold that appellants are not entitled to prevail on either of the issues raised in this appeal, and we therefore affirm the determinations of the Indian Claims Commission.

Affirmed.

DAVIS, *Judge*, concurring in part and dissenting in part:

I join in the court's opinion on the first claim, but dissent from the disposition of the demand for interest on the \$172,762.04 awarded by the Indian Claims Commission.

The sole ground for this claim is Article 7 of the 1854 Treaty, 10 Stat. 1084, which provided:

And as the amount of the annual receipts from the sales of their lands, cannot now be ascertained, it is agreed that the President may, from time to time, and upon consultation with said Indians, determine how much of the net proceeds of said sales shall be paid them, and how much shall be invested in safe and profitable stocks, the interest to be annually paid to them, or expended for their benefit and improvement.

- It is agreed that if this is read as containing an express provision for interest appellants can recover, otherwise not. See *United States v. Alcea Band of Tillamooks*, 341 U.S. 48, 49 (1951); *Confederated Salish and Kootenai Tribes v. United States*, 175 Ct. Cl. —, — (May 13, 1966), *cert. denied*, Oct. 24, 1966. It is also settled that the mere fact that the United States did not pay the additional \$172,000 in the 1850's, as it should have, would not, in itself, bar the Tribe from now collecting interest to which it would otherwise be entitled. See *United States v. Blackfeather*, 155 U.S. 180, 192 (1894); *Mille Lac Band of Chippewa v. United States*, 51 Ct. Cl. 400, 407-08 (1916); *Pawnee Tribe v. United States*, 56 Ct. Cl. 1, 15 (1920); *Menominee Tribe v. United States*, 107 Ct. Cl. 23, 33, 67 F. Supp. 972, 975 (1946); *Nez Perce Tribe v. United States*, 176 Ct. Cl. —, — (July 15, 1966).

These decisions show that, if the treaty had said in precise terms that the sums received from the sales should be deposited in the treasury at interest, there would be no question that appellants' position was correct. The issue for us is whether the actual words of the agreement gave the Peoria Tribe the same right to interest.

In resolving this question, we must remember that Indian treaties "are not to be interpreted narrowly, as sometimes may be writings expressed in words of art employed by conveyancers, but are to be construed in the sense in which naturally the Indians would understand them." *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938). "[T]hey are to be construed, so far as possible, in the sense in which the Indians understood them, and 'in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people.' *Tulee v. Washington*, 315 U.S. 681, 684-85." *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943).¹

The 1854 treaty contemplated that the proceeds of the land sales would either be paid to the Indians, from time to time, or be invested by the Government so as to bear fruit.² There are two problems with the phrasing. The

¹ The Supreme Court has often indicated that, where possible, such treaties are to be interpreted liberally in favor of the Indians. See *The Kansas Indians*, 5 Wall. (72 U.S.) 737, 760 (1866); *Choctaw Nation v. United States*, 119 U.S. 1, 27-28 (1886); *Jones v. Meehan*, 175 U.S. 1, 11 (1899); *Minnesota v. Hitchcock*, 185 U.S. 373, 396 (1902); *United States v. Winans*, 198 U.S. 371, 380-81 (1905).

² It would be wholly inadmissible, in my view, to read the treaty as permitting the President simply to retain the money in the treasury without interest, instead of turning it over to the Indians or investing it. The court does not suggest that the President had this do-nothing option, which undoubtedly would have contravened the Indians' understanding.

first is that the directive to invest referred to "safe and profitable stocks", with "the interest" to be paid over to or expended for the Tribe (emphasis added). To borrow the language of the Supreme Court in the *Blackfeather* case, *supra*, 155 U.S. at 172, "while this is not literally an agreement to pay interest, it has substantially that effect". In *Blackfeather* the provision was in the form of an annuity measured by five percent on the Indians' money, but the Court looked through this shell to see that the treaty parties intended the Indians to receive the normal proceeds from their funds. Here the treaty refers to "stocks" and "interest" from those stocks, but it seems clear that the signatories likewise desired the Indians to receive the increment normally earned (if they were not to have the money in their own hands). For some years before this 1854 treaty, the Federal Government construed similar agreements calling for investment in "safe and profitable stocks" yielding "interest" of not less than five per cent as being satisfied by an appropriation, from year to year, of a sum equal to five per cent interest. See Annual Report of the Commissioner of Indian Affairs, Nov. 30, 1852, p. 10 (H. Doc. 1, pp. 300-01); Annual Report of the Commissioner of Indian Affairs, 1853, pp. 10-12 (H. Doc. 1, p. 263).³ The only change in the 1854 treaty was the deletion of the specific reference to five per cent; the reason for this change seems to have been the wish to assure the Indians the possibility of a greater amount obtainable from pri-

³ In recommending that such appropriations no longer be made, but that the principal be invested, the Commissioner of Indian Affairs said that the prior practice had "failed to execute" the treaty stipulations, but it is clear to me from the context that he was complaining of the costly drain on the treasury of the practice of continually appropriating the interest without any money coming into the treasury through investment of the principal, and that he well understood the past practice to be in substitution for the payment of the proceeds of investment. He thought, too, that the Indians would be advantaged by investing the money.

vate investments, not to cut off the Indians' right to the fair proceeds of their moneys which were retained by the Government and not handed over to them. *Ibid.* That right was preserved.

The other problem—the one with which the court's opinion treats—arises from the possibility that the President might have immediately turned over the whole \$172,000 to the Indians, if it had been paid in 1857, without retaining any for investment.⁴ This is, of course, a theoretical possibility, but it seems very unlikely as a practical matter. The President would not hand over to these dependent Indians more than they needed or could properly use for day-to-day expenses; nor could the Tribe expect to receive more than this. The comparable article of a contemporaneous treaty with the Delawares, 10 Stat. 1048, 1050 (1854), says expressly that the amounts to be paid over were to meet "current wants" and "reasonable wants";⁵ and the Peoria Treaty would probably be interpreted in the same way. Thus, the President's discretion was not at large, but was to be exercised in consultation with the Indians and according to the standard of their need. On that basis, it is most unlikely that the large sum of \$172,000 would have been paid over rather than invested. Only a minimum of speculation is needed, in my opinion, to find that the money would have borne

⁴ See footnote 2, *supra*.

⁵ Article 7 of the Delaware treaty provided: "It is expected that the amount of moneys arising from the sales herein provided for, will be greater than the Delawares will need to meet their current wants; and as it is their duty, and their desire also, to create a permanent fund for the benefit of the Delaware people, it is agreed that all the money not necessary for the reasonable wants of the people, shall from time to time be invested by the President of the United States, in safe and profitable stocks, the principal to remain unimpaired, and the interest to be applied annually for the civilization, education, and religious culture of the Delaware people, and such other objects of a beneficial character, as in his judgment, are proper and necessary."

fruit if the United States had accounted for it in the 1850's.

The Treaty's use of "may", rather than "shall", should not be given the weight the court puts on it to show the unlimited character of the President's discretion. This was not a carefully-drawn business contract between equals or even a Congressional enactment, but an Indian treaty. "[F]riendly and dependent Indians are likely to accept without discriminating scrutiny the terms proposed." *United States v. Shoshone Tribe*, *supra*, 304 U.S. at 116. "The treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians." *Jones v. Meehan*, *supra*, 175 U.S. at 11. To the Peoria Tribe, Article 7 would have meant the same if it had said that the President "shall", instead of "may", determine the way the funds were to be allocated. Their understanding, as I judge it, was that the monies turned over to them would be enough to satisfy their current wants, and the rest was to be invested for profit, with the increment accruing to their benefit. That was "the substance of the right without regard to technical rules." *United States v. Winans*, *supra*, 198 U.S. at 381.

The Supreme Court's decision in *Blackfeather*, *supra*, 155 U.S. at 188, 192-93, supports, I think, this practical and nontechnical reading of the appellants' treaty. In that case the agreement calling for a five percent "annuity" on a fund composed of proceeds of Indian land sales provided further that the fund was to continue "during the pleasure of Congress, unless the chief of the said tribes or band, by and with the consent of their people, in general council assembled, should desire that the fund thus to be created, should be dissolved and paid over to them; in which case the President shall cause the same to be so paid, if in his discretion, he shall believe the happiness and prosperity of said tribe would be promoted thereby." Under this stipulation the fund was dissolved and paid over in 1852. But when the Supreme

Court agreed in 1894 with this court that judgment should be entered against the United States for certain sums not credited the Indians at the time of the sale (in 1840), the Court ruled that interest on that amount should be paid, not only until 1852, but until the judgment was paid (sometime after 1894). "If the government had originally accounted for the whole amount for which the court below held it to be liable, it would have paid five per cent upon this amount until the whole fund was paid over. The fund as to this amount being not yet distributed, the obligation to pay the five per cent annuity continues until the money is paid over." 155 U.S. at 193. This, I take it, was a refusal to hold that the Indians were barred from collecting interest from 1852 to 1894 because they could not prove that the omitted sum would not have been distributed in 1852 along with the other monies. Similarly, in the present case, the appellant Tribe, which did not in fact receive the \$172,000 in the 1850's should not be precluded from obtaining interest because it cannot prove conclusively that that sum would have been invested, rather than paid over at once, if the United States had sold the lands at public auction as it should have.

To construe the 1854 Treaty as providing for interest would not conflict with any decision of this court. In *Confederated Salish and Kootenai Tribes v. United States*, *supra*, 175 Ct. Cl. —, — (May 13, 1966), *cert. denied*, Oct. 24, 1966, the opinion assumed that a statute requiring deposit in the treasury of "all sums received on account of sales of Indian trust lands", and declaring that interest was to be paid on these deposits, would have applied to monies improperly withheld from the Indians; if it were not for a later act partially modifying the earlier legislation. In *Nez Perce Tribe v. United States*, *supra*, 176 C. Cl. —, — (July 15, 1966), the particular treaty specified a precise sum to bear interest (\$1,000,000), and "did not make the trust open-ended."
* * * The Agreement here specified a sum to bear interest, and that sum apparently was paid and did bear

interest; the sum claimed here is over and above the amount specified in the Agreement. In short, the Agreement has reference only to the amount that was actually agreed upon [i.e., \$1,626,222] and gives no warrant for reading in a requirement that any sum determined in the future to be the fair market value should bear interest." The present treaty, in contrast, is open-ended in its terms; it covers, not a specified sum, but all the net proceeds and receipts from the sales. The \$172,000 represents a major part of the proceeds which should have been set apart for the Tribe and invested.⁵

DURFEE, *Judge*, joins in the foregoing opinion concurring in part and dissenting in part.

⁵ It is irrelevant that an award of interest, pursuant to the 1854 treaty, could increase the award to plaintiff by five or six times. If the treaty so provides, we cannot refuse interest because the amount is relatively large.

APPENDIX "B"

**TREATY OF MAY 30, 1854, 10 Stat. 1082
FRANKLIN PIERCE,
PRESIDENT OF THE UNITED STATES
OF AMERICA:**

**TO ALL AND SINGULAR TO WHOM THESE
PRESENTS SHALL COME, GREETING:**

Whereas a treaty was made and concluded on the thirtieth day of May, one thousand eight hundred and fifty-four, by George W. Manypenny, Commissioner on the part of the United States, and the following named delegates of the united tribes of Kaskaskia and Peoria, Piankeshaw and Wea Indiana, viz: Kio-kaw-mo-zan, David Lykins; Sa-wa-ne-ke-ah, or Wilson; Sha-cah-quah, or Andrew Chick; Ta-co-nah, or Mitchell; Che-swa-wa, or Rogers; and Yellow Beaver, thereto duly authorized by said tribes; which treaty is in the words following, to wit:

Articles of agreement and convention made and concluded at the City of Washington this thirtieth day of May one thousand eight hundred and fifty-four, by George W. Manypenny, Commissioner on the part of the United States, and the following named delegates representing the united tribes of Kaskaskia and Peoria, Piankashaw and Wea Indians, viz: Kio-kaw-mo-zan, David Lykins; Sa-wa-ne-ke-ah, or Wilson; Sha-cah-quah, or Andrew Chick; Ta-ko-nah, or Mitchel; Che-swa-wa, or Rogers; and Yellow Beaver, they being duly authorized thereto by the said Indians.

Article 1. The tribes of Kaskaskia and Peoria Indians, and of Piankeshaw and Wea Indians, parties to the two

treaties made with them respectively by William Clark, Frank J. Allen, and Nathan Kouns, Commissioners on the part of the United States, at Castor Hill, on the twenty-seventh and twenty-ninth days of October, one thousand eight hundred and thirty-two, having recently in joint council assembled, united themselves into a single tribe, and having expressed a desire to be recognized and regarded as such, the United States hereby assent to the action of said joint council to this end, and now recognize the delegates who sign and seal this instrument as the authorized representatives of said consolidated tribe.

Article 2. The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, hereby cede and convey to the United States, all their right, title and interest in and to the tracts of country granted and assigned to them, respectively by the fourth article of the treaty of October twenty-seventh, and the second article of the treaty of October twenty-ninth, one thousand eight hundred and thirty-two, for a particular description of said tracts, reference being had to said articles; excepting and reserving therefrom a quantity of land equal to one hundred and sixty acres for each soul in said united tribe, according to a schedule attached to this instrument, and ten sections additional, to be held as the common property of the said tribe,—and also the grant to the American Indian Mission Association, hereinafter specifically set forth.

Article 3. It is agreed that the United States, shall as soon as it can conveniently be done, cause the lands hereby ceded to be surveyed as the public lands are surveyed; and, that the individuals and heads of families shall, within ninety days after the approval of the surveys, select [1083] the quality of land therefrom, to which they may be respectively entitled as specified in the second article

hereof; and that the selections shall be so made, as to include in each case, as far as possible, the present residences and improvements of each—and where that is not practicable, the selections shall fall on lands in the same neighborhood; and if, by any reason of absence or otherwise the above mentioned selections shall not all be made before the expiration of said period, the chiefs of the said united tribe shall proceed to select lands for those in default; and shall also, after completing said last named selections, choose the ten sections reserved to the tribe; and said chiefs, in the execution of the duty hereby assigned them, shall select lands lying adjacent to or in the vicinity of those that have been previously chosen by individuals. All selections in this article provided for, shall be made in conformity with the legal subdivisions of the United States lands, and shall be reported immediately in writing, with apt descriptions of the same, to the agent for the tribe. Patents for the lands selected by or for individuals or families may be issued subject to such restrictions representing leases and alienation, as the President or Congress of the United States may prescribe. When selections are so made or attempted to be made, as to produce injury to, or controversies between individuals, which cannot be settled by the parties, the matters of difficulty shall be investigated, and decided on equitable terms by the council of the tribe, subject to appeal to the agent, whose decision shall be final and conclusive.

Article 4. After the aforesaid selections shall have been made, the President shall immediately cause the residue of the ceded lands to be offered for sale at public auction, being governed in all respects in conducting such sale, by the laws of the United States for the sale of public lands, and such of said lands as may not be sold at public sale, shall be subject to private entry at the minimum price

of United States lands, for the term of three years; and should any thereafter remain unsold, Congress may, by law, reduce the price from time to time, until the whole of said lands are disposed of, proper regard being had in making the reductions, to the interests of the Indians, and to the settlement of the country. And in consideration of the cessions hereinbefore made, the United States agree to pay to the said Indians, as hereinafter provided, all the moneys arising from the sales of said lands after deducting therefrom the actual cost of surveying, managing, and selling the same.

Article 5. The said united tribe appreciate the importance and usefulness of the mission established in their country by the Board of the American Indian Mission Association, and desiring that it shall continue with them, they hereby grant unto said board a tract of one section of six hundred and forty acres of land, which they, by their chiefs, in connection with the proper agent of the board, will select; and it is agreed that after the selections shall have been made, the President shall issue to such person or persons as the aforesaid board may designate, a patent for the same.

Article 6. The said Kaskaskias and Peorias, and the said Piankeshaws and Weas, have now, by virtue of the stipulations of former treaties, permanent annuities amounting in all to three thousand eight hundred dollars per annum, which they hereby relinquish and release, and from the further payment of which they forever absolve the United States; and they also release and discharge the United States from all claims or damages of every kind by reason of the non-fulfilment of former treaty stipulations or of injuries to or losses of stock or other property by the wrongful acts of citizens of the United States; and in consideration of the relinquishments and

releases aforesaid, the United States agree to pay to said united tribe, under the direction of the President, the sum of sixty-six thousand dollars, in six annual installments, as follows: In the month of October, in each of the years one thousand eight hundred [1084] and fifty-four, one thousand eight hundred and fifty-five, and one thousand eight hundred and fifty-six, the sum of thirteen thousand dollars, and in the same month in each of the years one thousand eight hundred and fifty-seven, one thousand eight hundred and fifty-eight, and one thousand eight hundred and fifty-nine, nine thousand dollars, and also to furnish said tribe with an interpreter and a blacksmith for five years, and supply the smith shop with iron, steel, and tools, for a like period.

Article 7. The annual payments provided for in article six are designed to be expended by the Indians, chiefly in extending their farming operations, building houses, purchasing stock, agricultural implements, and such other things as may promote their improvement and comfort, and shall be so applied by them. But at their request it is agreed that from each of the said annual payments the sum of five hundred dollars shall be reserved for the support of the aged and infirm, and the sum of two thousand dollars shall be set off and plied to the education of their youth; and from each of the first three there shall also be set apart and applied the further sum of two thousand dollars, to enable said Indians to settle their affairs. And as the amount of the annual receipts from the sales of their lands, cannot now be ascertained, it is agreed that the President may, from time to time, and upon consultation with said Indians, determine how much of the net proceeds ~~of~~ said sales shall be paid them, and how much shall be invested in safe and profitable stocks,

the interest to be annually paid to them, or expended for their benefit and improvement.

Article 8. Citizens of the United States, or other persons not members of said united tribe, shall not be permitted to make locations or settlements in the country herein ceded, until after the selections provided for, have been made by said Indians; and the provisions of the act of Congress, approved March third, one thousand eight hundred and seven, in relation to lands ceded to the United States, shall, so far as the same are applicable be extended to the lands herein ceded.

Article 9. The debts of individuals of the tribe, contracted in their private dealings, whether to traders or otherwise, shall not be paid out of the general funds. And should any of said Indians become intemperate or abandoned, and waste their property, the President may withhold any moneys due or payable to such, and cause them to be paid, expended or applied, so as to ensure the benefit thereof to their families.

Article 10. The said Indians promise to renew their efforts to prevent the introduction and use of ardent spirits in their country, to encourage industry, thrift, and morality, and by every possible means to promote their advancement in civilization. They desire to be at peace with all men, and they bind themselves not to commit depredation or wrong upon either Indians or citizens; and should difficulties at any time arise, they will abide by the laws of the United States in such cases made and provided, as they expect to be protected and to have their rights vindicated by those laws.

Article 11. The object of the instrument being to advance the interests of said Indians, it is agreed if it prove

insufficient, from causes which cannot now be foreseen, to effect these ends, that the President may, by and with the advice and consent of the senate, adopt such policy in the management of their affairs, as, in his judgment, may be most beneficial to them; or, Congress may, hereafter, make such provisions by law as experience shall prove to be necessary.

Article 12. It is agreed that all roads and highways, laid out by authority of law, shall have right of way through the lands herein ceded and reserved, on the same terms as are provided by law, when roads and highways are made through the lands of citizens of the United States; and railroad companies, when the lines of their roads necessarily pass through the lands of the said Indians, shall have the right of way, on the payment of a just compensation therefor in money.

[1085] Article 13. It is believed that all the persons and families of the said combined tribe are included in the annexed schedule, but should it prove otherwise, it is hereby stipulated that such person or family shall select from the ten sections reserved as common property, the quantity due, according to the rules hereinbefore prescribed, and the residue of said ten sections or all of them as the case may be, may hereafter, on the request of the chiefs, be sold by the President, and the proceeds applied to the benefit of the Indians.

Article 14. This instrument shall be obligatory on the contracting parties whenever the same shall be ratified by the President and the Senate of the United States.

In testimony whereof the said George W. Manypenny, Commissioner as aforesaid, and the delegates of the said combined tribe, have hereunto set their hands and seals, at the place and on the day and year first above written.

George W. Manypenny, Commissioner [L.S.]

Kio-Kaw-Mo-Zan, his x mark.	[L.S.]
Ma-Cha-Ko-Me-Ah, or David Lykins.	[L.S.]
Sa-Wa-Ne-Ke-Ah, or Wilson, his x mark.	[L.S.]
Sha-Cah-Quah, or Andrew Chick, his x mark.	[L.S.]
Ta-Ko-Nah, or Mitchel, his x mark.	[L.S.]
Che-Swa, Wa, or Rogers, his x mark.	[L.S.]
Yellow Beaver, his x mark.	[L.S.]

Executed in presence of—

Charles Calvert,
Jas. T. Wynne,
Robert Campbell,
Wm. B. Waugh,

Ely Moore, *Indian Agent.*

Baptiste Peoria, his x mark, *U. S. Interpreter.*

Wm. B. Waugh, *witness to signing of Baptiste Peoria.*

* * *

(Schedule 10 Stat. 1085-1087 omitted)

[1087] And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the second day of August, eighteen hundred and fifty-four, ratify the same by a resolution in the words following, to wit:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,

August 2, 1854.

Resolved, (two-thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the articles of agreement and convention made and concluded at the City of Washington this thirtieth day of May, one thousand eight hundred and fifty-four,

by George W. Manypenny, Commissioner on the part of the United States, and the following named delegates representing the united tribes of Kaskaskia and Peoria, Piankeshaw and Wea Indians, viz: Kio-kaw-mo-zan, David Lykins, Sa-wa-ne-ke-ah, or Wilson; Sha-cah-quah, or Andrew Chick; To-ko-nah, or Mitchell; Che-swa-wa, or Rogers; and Yellow Beaver; they being duly authorized thereto by the said Indians.

Attest:

Asbury Dickens, *Secretary.*

Now, therefore, be it known that I, Franklin Pierce, President of the United States of America, do in pursuance of the advice and consent of the Senate, as expressed in their resolution of August second, one thousand eight hundred and fifty-four, accept, ratify, and confirm the said treaty.

In testimony whereof, I have caused the seal of the United States to be herewith affixed, having signed the same with my hand.

Done at the City of Washington, this tenth day of August, in the year of our Lord, eighteen
[Seal] hundred and fifty-four, and of the Independence of the United States, the seventy-ninth.

Franklin Pierce.

By the President:

W. L. Marcy

Secretary of State.